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Board of Health Minutes 02/06/2013

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE BOARD OF HEALTH

27 Maple Street
Arlington, Massachusetts 02476
Christine M. Connolly, MPH, CHO
Town of Arlington
Director of Health and Human Service

Board of Health Meeting Minute
Wednesday, February 6, 2013
Ground Floor Conference Room
Arlington Senior Center
5:30pm

Board Members in Attendance: Dr. Marie Walsh Condon, Dr. Michael Fitzpatrick (Chair), Mr. Kenneth Kohlberg

Staff in Attendance: Christine Connolly, Director of Health and Human Services and James Feeney, Health Compliance Officer, Natasha Waden, Lead Health Compliance Officer, Gloria Ojimba, Intern.

Other: Juliana Rice, Town Counsel, DJ Wilson, Tobacco Control Director, Public Health Liaison, Mass Municipal Association; Wesley Chin, Sub-regional tobacco control coordinator for Arlington, Belmont, Brookline, Newton and Watertown; Kimona Cameron, Brookline Health Department.

Public in attendance: Adnan Rahim, Tarsem Singh, Davinder Sharma, Musfiqur Rahman, Sankar Marichany, Ranbir Rai, Dan Ramnes, Jani Fowler

Maureen Stephens, Mike Porcano, Ray Laham, A. Sofia Khouri, Anthony Caliendo, Michael Ellakkis, Alex Kurshnisky

December 12, 2012 meeting minutes were approved with the following edits: In agenda item II: removal of the second reference "to a minor"; in agenda item III: removal of "has become problematic" and replace with "was in violation of the 1999 Food Code", in sentence 6: "order" change to "ordered".

Mr. Anthony Caliendo, Owner of 20 Belknap, made a request to move his hearing for a variance from the housing code up on the agenda so that he could attend a zoning meeting in the Town of Lexington. Mr. Caliendo stated he would need to leave by 7:00PM. Dr. Fitzpatrick, Chair stated that the Board would proceed with the current layout of the agenda because he was confident that they would be able to get to his request before 7:00PM.

Inspector Waden reported that on January 7, 2013 a tobacco compliance check was conducted by the Health Department, in which a minor was used to attempt to purchase cigarettes at 25 establishments. One establishment was closed at the time of inspection. A total of 11 establishments out of 24 sold cigarettes to said minor. The minor was a 17 year old male and was trained by Health Department staff on tobacco compliance checks in accordance with MDPH Tobacco Control Program guidelines. Said minor purchased a package of Marlboro cigarettes at Little Joe's Convenience Store at 3:47PM. The minor was not asked his age or for identification. Ranbir Rai was present for the hearing and stated that this establishment has not violated in 6 years and that this was a mistake. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a \$100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said

suspension.

On January 7, 2013 at 3:53PM said minor purchased a pack of Marlboro cigarettes at Arlington Liquors. The minor was not asked his age or for identification. Nobody from the establishment was present during the hearing. Dr. Walsh-Condon requested that the Board of Selectmen's Office be notified of the sale to a minor and that additional training be conducted with this establishment, as it is under new ownership. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a \$100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:00PM said minor purchased a pack of Marlboro cigarettes at Mystic Street Gulf. The minor was not asked his age or for identification. Michael Elakis was present for the hearing and stated that the clerk did not do his job in checking for identification. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a \$100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:15PM said minor purchased a pack of Marlboro cigarettes at Arlington Shell. The minor was not asked his age or for identification. Ana Sofia Khouri, owner, was present for the hearing and stated that this was the first violation for them, but that clerk had been working at this location for a long time. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a \$100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:31PM said minor purchased a pack of Marlboro cigarettes at CVS Pharmacy, 833 Mass Ave. The minor was not asked his age or for identification. Jani Fowler, Store Manager, was present for the hearing and stated that all new employees go through training when they are first hired. In accordance with corporate policy, the employee was terminated. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a \$100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:41PM said minor purchased a pack of Marlboro cigarettes at Symmes Mini Mart. The minor was not asked his age or for identification. Ray Laham was present for the hearing and stated that the clerk used bad judgment, there were two clerks at the time and one thought the other checked for identification. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and the issuance of a \$100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:51PM said minor purchased a pack of Marlboro cigarettes at Walgreens, 324 Mass Ave. The minor was not asked his age or for identification. Mike Porcaro, Store Manager, was present for the hearing and stated that all staff has been retrained and the clerk who sold to the minor was disciplined with a final written warning. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and the issuance of a \$100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:58PM said minor purchased a pack of Marlboro cigarettes at Mass Convenience, 245 Mass Ave. The minor was not asked his age or for identification. Davindar Sharma, owner, was present for the hearing and stated that all the tools are in place, the clerk has worked there for over 10 years and he just made a mistake. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a \$100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 5:06PM said minor purchased a pack of Marlboro cigarettes at Dagg's. The minor was not asked his age or for identification. Musfiqur Rahman was present for the hearing and stated that his father was helping him out and used bad judgment and that it was an honest mistake. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a \$100 fine in accordance with Mass State Law.

Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 5:19PM said minor purchased a pack of Marlboro cigarettes at Boyle's Market. The minor was not asked his age or for identification. Tarsem Singh was present for the hearing and stated that the clerk was a new employee who had been trained, but that he made a mistake. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a \$100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 5:31PM said minor purchased a pack of Marlboro cigarettes at Arlington Gulf. The minor was not asked his age or for identification. Adnan Rahim was present for the hearing and stated that there was confusion between the gas attendant and the mechanic. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a \$100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

Alex Kurshnisky, owner of Arlington Liquor's, introduced himself at the end of the tobacco hearings. The Board reviewed the disciplinary action that had been voted on for this establishment.

(a) Inspector Waden reviewed the Draft regulations for Restricting the Sale of Tobacco Products and Nicotine Delivery Products in the Town of Arlington. DJ Wilson from Mass Municipal Association was also present to help facilitate the discussion of the regulations. The following areas were discussed in detail: Section A: Statement of Purpose, the Board would like to keep the current language, as it proves the need to implement all aspects of this regulation. Section D: Tobacco and Nicotine Delivery Product Sales Prohibited: The Board would like to increase the age of tobacco sales from 18 to 21. DJ Wilson provided an overview of how the Town of Needham implemented this over a few years. The Board approved the language. The Board would like to include language requiring the establishment to post signage about tobacco cessation. Inspector Waden will present draft language to the Board at the next meeting requiring signage for sales to persons under age 21. SECTION E: TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PERMITS: the fee for a permit will remain at \$500. Furthermore, the Board would like to change the mandatory retailer training to annually, change the number of permits to 19 for capping purposes; and reduce the number of permits to 15 by 2018. SECTION F: CIGAR SALES REGULATED: The Board request that item 2b and 2c be removed SECTION O: VIOLATIONS, when considering cumulative violations the Board would like to review a 36 month violation history as opposed to a 24 month history, continue with fine schedule of \$100, \$200, \$300, remove "a minimum" from item 1c, and add language ("or failure") to item 2 as requested by Town Counsel.

(b) DJ Wilson reviewed the proposed draft regulations Prohibiting Smoking in Workplaces and Public Places. The following areas were discussed in detail: SECTION 4: SMOKING PROHIBITED, DJ Wilson explained that it might be difficult for staff to enforce item (d) as it pertains the prohibition of smoking within 15 feet of an entranceway accessible to the public. The Board tabled this discussion until the next meeting.

The Board agreed to hear agenda item XVI and XVII concerning an update on one property (18 Belknap) and a variance request on another property (20 Belknap) both owned by Mr. Anthony Caliendo.

Inspector Feeney provided the Board with an update regarding existing violations concerning 18 Belknap Street that have not been corrected. Feeney first read two letters into the record, one from a group of neighbors revealing their concerns about disruptive tenants and maintenance of the property and the other from Deputy Chief James Bailey regarding the fire alarm system, the front stairwell and the rear fire escape. Mr. Caliendo stated that he has no authority to do anything about the tenants and insists that his building is well maintained. Feeney reviewed with the Board that Mr. Caliendo had requested a hearing at the last meeting to discuss violations pertaining to the fire escape and lack of an automatic door locking mechanism. At that hearing the Board voted to uphold the order to correct that had previously been issued by Inspector Feeney. Mr. Caliendo reported that he would be filing an appeal to the BBRS concerning the automatic lock, and that he was still working on the repairs to the fire escape. Feeney displayed pictures of the repairs that had currently been made to the fire escape, to which the Board deemed unacceptable. Mr. Caliendo stated that he is a licensed contractor and that according to the regulations it is in compliance. The Board requested a recommendation from Feeney concerning the next steps. Feeney recommended that the health department move forward with filing a complaint in court for failure to correct these violations within the allotted time frame. The Board unanimously approved the recommendation.

Inspector Feeney provided the Board with a copy of the Order letter dated January 15, 2013 addressed to property owner Anthony Caliendo. Feeney went on to explain that Mr. Caliendo is requesting a variance from item #3, the installation of

mechanical ventilation in the bathroom that exhausts to the exterior. Occupant Sankar Marichamy was present at the hearing and explained that his daughter has asthma and that the second hand smoke, which he believes is coming from the neighboring unit, entering through his bathroom, makes it difficult for his daughter to breathe. Feeney explained in a memo to the Board that there is no duct work for the fan and it appears that the air being removed from the bathroom is being pushed into the open wall cavity. Mr. Caliendo stated that he has never had any complaints regarding this matter and that because the house is over 100 years old; it is not possible to make the repair. Dr. Fitzpatrick requested that the health department staff contact the building department to conduct an inspection to determine if it would be possible. Director Connolly explained that it would not likely be possible to have the building inspector out at this property. Feeney explained that a professional such as an HVAC person would be able to provide feedback to the owner on how such repairs could be made. Therefore, the Board unanimously voted to deny the variance.

Agenda item XIV: Medical Marijuana. DJ Wilson provided an overview of the status of medical marijuana by stating the following: As of 1/1/13 Mass Department of Public Health has 90 days to write regulations, at this time, it does not look like the first dispensaries will be opening until early fall, Mass Department of Public Health is looking at sample regulations from Maine, Colorado and New Mexico. Juliana Rice, Town Counsel mentioned that there are two warrant articles being proposed before Town meeting, 1. Which will establish zoning requirements for dispensaries' and 2. In the event that regulations are not in place, this would provide a local moratorium on allowing dispensaries to open until the proper regulations are in place.

Inspector Feeney led the discussion of the draft Bodywork regulations, explaining that at this time there are no State model regulations for Bodywork; therefore, best practices from the Towns of Newton and Belmont were taken under consideration when drafting these regulations. Feeney explained that the need for such regulations was discovered during compliance checks that were conducted by a State inspector and a local police officer. During these checks most therapists identified themselves as body workers as opposed to Massage Therapists, as Body Workers are exempt from the state massage law. Dr. Walsh asked about the inclusion of Reiki in these Regulations, and recommended staff reaches out to the school of acupuncture for guidance and assistance. Feeney agreed to reach out to local experts and stakeholders, and to revise according to the Board's comments; he also stated the Regulations were created in an expedited fashion and would be revised for the next meeting.

Juliana Rice, Town Counsel, reported to the Board that a group of High School Students proposed a warrant article for Town Meeting to restrict the use of water bottles less than 1 liter.

Environmental updates were tabled until the next meeting.

Restaurant updates: Feeney reported that Family Injera installed a grease trap, and that Arlington Restaurant and Diner has been working with a consultant. Inspector Waden reported on the following establishments: Barismo moved one door down from their previous location, Napoli Pizza is under new ownership, Wings Over Arlington has opened, Something Sweet Without Wheat has opened. In addition Waden reported that plans for Menotomy Grill and Tavern, Frozland and Sczechuan's Dumpling have been approved. The following establishment did not renew their food permits for 2013: Nana's Market, Jade Garden, Gemma, Foodmaster and Ada-Lula Pastry. Lastly, Whole Foods plans to open in the Foodmaster location by September.

No public comment.

Meeting adjourned at 8:04pm

